IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR.

J U D G M E N T

S.B. Civil Misc. Appeal No.1575/2000
S.B. Civil Misc. Stay Application No. 2397/2000
(Happo & Ors. Versus Rakesh & Ors.)

DATE OF JUDGMENT : 24.04.2015

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Rajneesh Gupta, counsel for appellant(s)
Mr. Tej Prakash Sharma, counsel for the Insurance Co.
Mr. Lakhan Singh Tomar, for the respondents

This appeal has been filed by the appellant(s) against the judgment passed by the learned Tribunal.

At the very outset, learned counsel for the appellant(s) submits that the learned Tribunal while passing the impugned judgment has not taken into consideration the grounds which he has raised by way of aforesaid appeal(s). The finding of learned Tribunal on **issue no. 1 & 7** is contrary to the material available on record. Thus, the impugned judgment passed by the learned Tribunal qua aforesaid issue(s) be quashed and set aside and the matter should be remanded to the learned Tribunal with the direction to decide the matter afresh qua aforesaid issue(s) in the light of grounds which he has raised by way of aforesaid appeal(s).

E Converso, the learned counsel for the respondent(s) has/have opposed the arguments of learned counsel for the appellant(s). However, he/they has/have contended that even if this Court is going to remand the matter, in such circumstances, the Tribunal should be directed to decide the matter afresh qua aforesaid issue(s), after giving opportunity of hearing to them also.

I have heard learned counsel for the

parties and carefully perused the relevant material on record including the impugned judgment.

In my considered view, the learned Tribunal while passing the impugned judgment has not appreciated the facts of the case and the grounds raised by the learned counsel for the appellant(s) by way of instant appeal(s) in a proper manner and passed the impugned judgment surreptitiously. Thus, the impugned judgment passed by the learned Tribunal needs interference by this court.

In the result, the appeal(s) is/are partly allowed; the impugned judgment passed by learned Tribunal qua aforesaid issue(s) is quashed and set aside and the matter is remanded to the Tribunal with the direction to decide the matter afresh qua aforesaid issue(s) as early as possible, in the light of grounds raised by the learned counsel for the appellant(s) by way of the aforesaid appeal(s) and the judgment(s) to be cited by learned counsel for the parties, if any, after issuing notice to all the concerned parties and giving opportunity of hearing to them.

Both the parties are directed to appear before the learned Tribunal on 30.9.2015.

(MAHESH CHANDRA SHARMA)J.

All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal
PA